

## **REMARKS**

Claims 1 - 15 are in the case. All Claims have been rejected. Through the present communication, Claim 1 has been amended such that the previously optional aging and drying steps are no longer optional and are included within the presently claimed process. Support for this amendment can be found, among other places, in Claim 1 as originally filed. No new matter has been added through this amendment.

Claims 14 and 15 have been amended to cover the introduction of the oxidic catalyst composition of Claims 12 and 13, respectively, into an FCC unit. Support for this amendment can be found, among other places, at page 10, lines 30-33. No new matter has been added through this amendment. No Claims have been amended to overcome prior art.

## **CLAIM REJECTIONS**

### **PROVISIONAL TYPE DOUBLE PATENTING REJECTION**

Claims 1 and 3 have been rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

### **EXAMINER'S POSITION**

The Examiner takes the position that Claims 1 and 3 encompass the Claims of USSN 11/915,704. Thus, the Examiner has rejected the present application under the judicially created doctrine of obviousness type double patenting.

### **APPLICANTS' POSITION**

Applicants are unsure as to this rejection and take the position that it is improper in the present application. The present application has an earliest effective filing date of December 3, 2003, and USSN 11/915,704 has an earliest effective filing date of June 6, 2005. Thus, the present application cannot have a term extending beyond the term of USSN 11/915,704.

The Examiner is requested to reconsider and withdraw this rejection.

REJECTION UNDER 35 U.S.C. 112 (SECOND PARAGRAPH)

Claims 14 and 15 have been rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

EXAMINER'S POSITION

The Examiner takes the position that Claims 14 and 15 recite a "use" of the oxidic catalyst composition without reciting any active, positive steps on how this use is actually practiced.

APPLICANTS' POSITION

Claims 14 and 15 have been amended to recite active steps. The Examiner is requested to reconsider and withdraw this rejection.

REJECTION UNDER 35 U.S.C. 101

Claims 14 and 15 have been rejected under 35 U.S.C. 101.

EXAMINER'S POSITION

The Examiner takes the position that Claims 14 and 15 recite a "use" of the oxidic catalyst composition without reciting any active, positive steps on how this use is actually practiced, and thus results in an improper definition of a process.

APPLICANTS' POSITION

While Applicants do not believe a rejection under 35 USC 101 is proper in this instance, this argument is moot since Claims 14 and 15 have been amended to recite active steps.

The Examiner is requested to reconsider and withdraw this rejection.

FIRST REJECTION UNDER 35 U.S.C. 102

Claims 1, 2, 4-7, and 9-11 have been rejected under 35 U.S.C. 102(b) as being anticipated by United States Patent Number 5,565,181, Dieckmann et al. ("Dieckmann").

### EXAMINER'S POSITION

The Examiner takes the position that Dieckmann teaches a method of preparing an oxidic catalyst additive comprising forming a slurry consisting of an aluminum suspension (oxide suspension or nitrate), a magnesium compound (oxide suspension or nitrate), and  $\text{LnCu}_{0.4}\text{Mn}_{0.6}\text{O}_3$ , citing Example 1, col. 11, line 35 to col. 12, line 37.

### APPLICANTS' POSITION

Applicants respectfully disagree with the Examiner, as it is Applicants' position that Dieckmann does not anticipate the presently claimed invention, as amended.

In order to anticipate, a given reference must disclose, either directly or indirectly, each and every element of the claimed invention. It has been frequently established by Federal Circuit decisions that anticipation is established only if all of the elements of an invention as stated in a patent claim are identically set forth in a single prior art reference, Transclean Corporation v. Bridgewood Services, Inc., 290 F.3d 1364, 62 U.S.P.Q.2d 1865 (Fed. Cir. 2002); Gechter v. Davidson, 116 F.3d 1454, 1457, 43 U.S.P.Q.2d 1030, 1032 (Fed. Cir. 1997); Mehl/Biophile International Corporation v. Milgraum, 192 F.3d 1362, 1365, 522 U.S.P.Q.2d 1303, 1306 (Fed. Cir. 1999).

The present invention embodied by Claims 1, 2, 4-7, and 9-11 is a process for the preparation of an oxidic catalyst composition. The process comprises a) preparing a precursor mixture consisting of (i) a compound 1 being one or more trivalent metal compounds, (ii) a compound 2 being one or more divalent metal compounds, (iii) a compound 3 which is different from compounds 1 and 2 and is one or more compounds selected from the group consisting of rare earth metal compounds, phosphorus compounds, and transition metal compounds, and (iv) optionally water, which precursor mixture is not a solution, b) if the precursor mixture contains water, optionally changing the pH of the slurry, c) aging the precursor mixture, d) drying the precursor mixture, and e) calcining the resulting product.

Dieckmann is completely silent as to aging any of its components analogous to the present precursor mixtures and also does not disclosing drying any of its components analogous to the present precursor prior to calcination.

With regards to the Examiner's rejections of Claims 2 and 4-12 in light of Dieckmann, Applicants submit that these Claims are dependent Claims and include by

definition all of the limitations of the Claims from which they depend. Thus, Claims 2 and 4-12 are novel in light of Dieckmann for, among other reasons, the reasons noted above.

The Examiner is requested to reconsider and withdraw these rejections.

#### SECOND REJECTION UNDER 35 U.S.C. 102

Claims 1, 2, 4-7, and 9-11 have been rejected under 35 U.S.C. 102(b) as being anticipated by United States Patent Number 5,108,979, Magnabosco et al. ("Magnabosco").

#### EXAMINER'S POSITION

The Examiner takes the position that Magnabosco teaches a method of preparing synthetic spinel particles comprising forming a mixture containing a compound of  $R^{2+}[A]$ , a compound of  $R^{3+}[B]$ , a compound of  $R^{2+}[C]$  or  $R^{3+}[D]$ , citing col. 31, lines 4-51. The Examiner continues that Magnabosco further teaches a variation where the third metal is vanadia that can be added directly to the alumina sol starting ingredient, citing col. 31, lines 4-25.

#### APPLICANTS' POSITION

Applicants respectfully disagree with the Examiner, as it is Applicants' position that Magnabosco does not anticipate the presently claimed invention, as amended.

In order to anticipate, a given reference must disclose, either directly or indirectly, each and every element of the claimed invention. It has been frequently established by Federal Circuit decisions that anticipation is established only if all of the elements of an invention as stated in a patent claim are identically set forth in a single prior art reference, Transclean Corporation v. Bridgewood Services, Inc., 290 F.3d 1364, 62 U.S.P.Q.2d 1865 (Fed. Cir. 2002); Gechter v. Davidson, 116 F.3d 1454, 1457, 43 U.S.P.Q.2d 1030, 1032 (Fed. Cir. 1997); Mehl/Biophile International Corporation v. Milgraum, 192 F.3d 1362, 1365, 522 U.S.P.Q.2d 1303, 1306 (Fed. Cir. 1999).

The present invention embodied by Claims 1, 2, 4-7, and 9-11 is a process for the preparation of an oxidic catalyst composition. The process comprises a) preparing a precursor mixture consisting of (i) a compound 1 being one or more trivalent metal compounds, (ii) a compound 2 being one or more divalent metal compounds, (iii) a compound 3 which is different from compounds 1 and 2 and is one or more compounds selected from the group consisting of rare earth metal compounds, phosphorus compounds,

and transition metal compounds, and (iv) optionally water, which precursor mixture is not a solution, b) if the precursor mixture contains water, optionally changing the pH of the slurry, c) aging the precursor mixture, d) drying the precursor mixture, and e) calcining the resulting product.

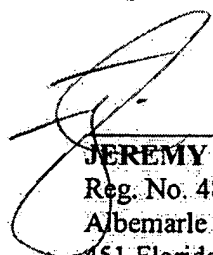
As noted in the present Claims, the precursor mixture is not a solution. Thus, the present Claims differ from those sections of Magnabosco incorporating vanadia since the aluminum is in the form of a sol.

Further, Magnabosco is completely silent as to aging any of its components analogous to the present precursor mixtures and also does not disclosing drying any of its components analogous to the present precursor prior to calcination.

The Examiner is requested to reconsider and withdraw these rejections.

Based on the preceding remarks, the Examiner is requested to reconsider and withdraw all rejections, and pass this application to allowance. The Examiner is encouraged to contact Applicants' attorney should the Examiner wish to discuss this application further.

Respectfully submitted,



---

**JEREMY J. KLIEBERT**  
Reg. No. 48,227  
Albemarle Corporation  
451 Florida Street  
Patent Law Department  
Baton Rouge LA US 70801-1765  
Telephone: 225-388-8191  
Facsimile: 225-388-7239